

## **2011 DRAFTING REQUEST**

### **Assembly Amendment (AA-AB66)**

Received: **09/08/2011**

Received By: **pkahler**

Wanted: **Soon**

Companion to LRB:

For: **Mark Radcliffe (608) 266-7461**

By/Representing: **Pam Shannon and Mike Queensland**

May Contact:

Drafter: **pkahler**

Subject: **Dom. Rel. - cust./plac./vis.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Radcliffe@legis.wisconsin.gov**

Carbon copy (CC:) to: **Pam.Shannon@legis.wisconsin.gov**  
**Michael.Queensland@legis.wisconsin.gov**  
**Rep.Spanbauer@legis.wisconsin.gov**

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#### **Pre Topic:**

No specific pre topic given

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#### **Topic:**

Prohibiting final orders modifying custody while service member is on active duty

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#### **Instructions:**

See attached

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#### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/09/2011	kfollett 09/09/2011		_____			
/1			jfrantze 09/09/2011	_____	lparisi 09/09/2011	lparisi 09/09/2011	

FE Sent For:

<END>

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/?	pkahler	11/5/9 9/9	8/9/9	9/9			

FE Sent For:

<END>

## Kahler, Pam

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**From:** Kahler, Pam  
**Sent:** Wednesday, September 07, 2011 3:53 PM  
**To:** Shannon, Pam  
**Subject:** RE: Assembly Bill 66

I'll give you a call.

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**From:** Shannon, Pam  
**Sent:** Wednesday, September 07, 2011 3:52 PM  
**To:** Kahler, Pam  
**Subject:** RE: Assembly Bill 66

Thanks, Pam. I'll suggest this in the discussion tomorrow. I just got back to my desk and got your message. Do we need to talk?

*Pam Shannon*  
Senior Staff Attorney  
Wisconsin Legislative Council Staff  
(608) 266-2680  
pam.shannon@legis.wisconsin.gov

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**From:** Kahler, Pam  
**Sent:** Wednesday, September 07, 2011 3:46 PM  
**To:** Shannon, Pam  
**Subject:** RE: Assembly Bill 66

*Draft this as the amendment ↓*

Pam:

I think a simple fix would be to just say "a court may not make a final order modifying the order of legal custody ...." on page 3, lines 9 and 10 of the bill, because s. 767.225 (temporary orders) applies to actions affecting the family that are modifications. The court already has, then, under current law, the ability to make a temporary order while the service person is away, the court just could not make a final order.

Pam

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**From:** Shannon, Pam  
**Sent:** Wednesday, September 07, 2011 2:29 PM  
**To:** Kahler, Pam  
**Subject:** FW: Assembly Bill 66

fyi

*Pam Shannon*  
Senior Staff Attorney  
Wisconsin Legislative Council Staff  
(608) 266-2680  
pam.shannon@legis.wisconsin.gov

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**From:** Rose, Laura  
**Sent:** Wednesday, September 07, 2011 2:00 PM  
**To:** Groshek, Dave; Rep.Radcliffe  
**Cc:** Shannon, Pam; Queensland, Michael  
**Subject:** FW: Assembly Bill 66

Hi Dave,

Here is the email that Mike Queensland sent on Friday. He'll be back in the office Thursday morning and he has been notified of the meeting tomorrow.

Thanks,

Laura

*Laura D. Rose, Deputy Director*  
Wisconsin Legislative Council  
One East Main Street, Suite 401  
PO Box 2536  
Madison, WI 53701-2536  
tel: 608.266.9791  
fax: 608.266.3830  
laura.rose@legis.wisconsin.gov

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**From:** Queensland, Michael  
**Sent:** Friday, September 02, 2011 3:18 PM  
**To:** Radcliffe, Mark  
**Cc:** Rose, Laura  
**Subject:** Assembly Bill 66

Representative Radcliffe:

At the Public Hearing for AB 66, the "bill," you inquired whether the bill permits a court to modify an order of legal custody while the service member is on active duty in special cases (i.e. the service member commits a crime against a child while they are on active duty). The bill, as written, does not allow a court to modify an order of legal custody in this, or any other situation. As a result, I have included an option for you to consider that may resolve your concern.

Section 5 of the bill currently reads:

767.451 (3m) (b) **Notwithstanding sub. (1)**, if a party who is a service member has been granted sole or joint legal custody of a child, a court may not modify the order of legal custody while the service member is on active duty in the U.S. armed forces.

One option could be to delete Section 5 of the bill and amend 767.451 (1) (a) to also apply to service members on active duty. 767.451 (1) (a) provides the standard for courts to follow when making a decision regarding substantial modifications of legal custody and physical placement orders within 2 years after a judgment has been in place. This standard is significantly higher than the standard which applies after a two year period, 767.451 (1) (b).

If amended, 767.451 (1) (a) would require a party seeking a modification against a service member on active duty "to show by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child." The Wisconsin Supreme Court has held that the term "necessary" embodies at least two concepts:

1) that the modification must operate to protect the child from alleged harmful custodial conditions; and 2) that the physical or emotional harm threatened by the current custodial

conditions must be severe enough to warrant modification.

*Paternity of Stephanie R.N.* 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

Requiring a party to show by substantial evidence that the current custodial conditions threaten severe physical or emotional harm to the child is a high burden. You may feel that this high burden is an appropriate balance considering the rights of the veteran to have contact with their child and the rights of the child to be safe from threats of physical or emotional harm.

As you are already aware, Representative Spanbauer anticipates having an Executive Hearing on the bill in less than two weeks, on September 15, 2011. Because of this short timetable, it may be in everyone's best interest to begin drafting any potential amendments in the near future. If you would like to have a conference call with myself, Representative Spanbauer and anyone else to discuss an amendment, I would be happy to partake. I would also recommend doing so next Thursday or on Friday morning because I will be out of the office on Tuesday and Wednesday. If you have any questions or need additional information before next Thursday, please contact Laura Rose at the Legislative Council staff offices.

Sincerely,

Mike Queensland  
Wisconsin Legislative Council  
(608) 266-3810  
michael.queensland@legis.wisconsin.gov



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1483/

PJK:.....

Handwritten signature/initials

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO 2011 ASSEMBLY BILL 66**

(in 9-9)  
today, if  
possible  
(mon, 7 not)

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 3, line 9: delete "modify" and substitute "make a final order that
- 3 modifies".
- 4 **2.** Page 3, line 11: delete that line and substitute "forces. The court may,
- 5 however, make a temporary order, as provided in s. 767.225 (1) (a).".
- 6 **3.** Page 4, line 7: delete "determination" and substitute "~~determination~~ final
- 7 order".

8 (END)